

*Excommunication Excommunicated:*

OR,

LEGAL EVIDENCE,

That the Ecclesiastical

COURTS

Have no Power to Excommunicate any  
person whatsoever for not coming to his  
PARISH-CHURCH.

IN A

DIALOGUE

BETWEEN A

DOCTOR of both LAWS,

AND A

Substantial Burgher of TAUNTON-DEAN.

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LONDON:

Printed in the Year 1680.

THE INFORMATION EXCHANGE

OF

LEGAL EVIDENCE

IN THE

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DOCTOR.

**W**Hither so fast good Neighbour? you foot it as if  
you were in extraordinary haste?  
*Burgher.* I beg your pardon, Sir; I am yours  
to command when I am my own, and at another  
time would postpone my own business to your diversions; but, at  
present, I am under very pressing circumstances.

*Dr.* May I not arrest your speed so long, as whilst I know the  
cause of this precipitate haste? Is your wife a dying? or your Houle  
on fire? has your only Son broke his Leg? pray let me know the  
matter; perhaps my counsel and advice may compeniate the delay,  
and either let you see you had no cause to be so hasty, or how to ma-  
nage your business so, that you make no more hast than good speed.

*Burg.* The short of my case then is this; Last night a *vexatious*  
*Paritor*, one that plies hereabouts continually, snapt me with a Sum-  
mons to appear by Ten of the Clock this morning at the Bishops  
Court; Now if I appear not, they take the advantage, and excommu-  
nicate me upon a contempt: If I do appear, 'tis ten to one they have  
no Libel ready, and then I must appear next Court-day, and so on-  
wards, till some journey, sickness or other indispenfable occasion  
make me absent, and then be sure I'm delivered to the Devil. 'Tis  
very true, formerly for a piece of money, a sinner might have been  
absolved; and the Register of *L.* offered to compound with us at so  
much *per annum*, and then we might be Schismatics, and be hang'd,  
and go-to the Devil for all him; but the case I fear is much altered;  
and no money will purchase an Absolution in this juncture.

*Dr.* I wonder at that, I confess! I had thought money had had  
a sovereign omnipotency in our Courts!

*Burg.* There's a special and extraordinary reason for't at this time: For this Excommunication is such a terrible thing, that it incapacitates a Freeholder from having a voice in the Election of Members to serve in Parliament, and does so bereave a Gentleman of all wisdom and understanding, that he's immediately unfit to be chosen to serve in that Body: and thus the Courts having gotten into their hands such an Engine, may hinder the Election of any who will not conspire with them in their usurpation; and any person from chusing, who will not give up their Votes to their conduct and management.

*Dr.* I perceive a sorry bugbear will affright you out of your privileges; But what are you cited into the Court for? you must surely be some notorious offender, a Fornicator, a Simonist, an Adulterer, or one guilty of some scandalous immorality.

*Burg.* No such matter Sir, I do assure you; my life and conversation is well known to my Neighbours, and I can with confidence look the most critical Judge in the face, upon any of those accounts.

*Dr.* Then I dare say, you are tainted with the *Arian Heresy*, which allows no specifical difference between a Bishop and the inferior Presbyters; or a Schismatick that absent your self from Divine service, and frequent Conventicles.

*Burg.* I shall freely make you my Confessor in this matter; I am so far from being against Bishops, that where there's one, I wish there were an hundred; I confess I frequent private meetings, (If you will call them private, which are as open and numerous, as those that boast of the name of publick) for we have such a lamentable Parson in our Parish, one that Preaches not above once a month, and that so little to the purpose of our salvation, that quite turns my Stomach from him; and yet the seldomer and shorter he Preaches, so much the better, unless he would Preach better; but had we one sober in his life, sound in the faith, and usefull in his preaching, I should not baulk him, but hear him and his Common-Prayer too sometimes, rather than forfeit my privilege of chusing our Representatives; for I freely own to you, I am a kind of *Latitudinarian*.

*Dr.* I cannot believe but that you are highly mistaken in this matter; it cannot enter into my thoughts, that our Reverend Fathers should ever pervert that high censure of Excommunication so, as to make it a State Engine, to serve their interest and passions; especially to hinder the peoples free-choice of their Trustees to serve in Parliament, in such a juncture of time as this, when all men expected of them, they would have united the Protestant interest, to oppose the encroachments of the Popish Faction; and least of all, that they would



would take the advantage of your not coming to Church, when they admit such sad tools into the Ministry, and then induct them into Benefices: For at this rate they may excommunicate a third part of the Kingdom, and then the Fanaticks would clamour filthily, that they were partial in their censures, seeing the instances of any excommunicated for whoredom, Simony, swearing, drunkennels, are so rare, and those of Papists who totally withdraw from our Church, are invisible, not a president of an excommunicated Romanist in an Age.

*Burg.* It's in vain to argue a thing cannot be, when we see it actually done before our eyes.

*Dr.* Then I must needs say that 'tis the most horrid profanation of Gods Ordinance that can be imagined; to use, or rather abuse, excommunication, which is a spiritual weapon, and design'd only to deprive scandalous sinners of the present benefit of the Churches society, till by repentance and reformation, they have repaired Gods Glory and the Churches credit, to a secular end, to hinder them in chusing Members to serve in Parliament.

*Burg.* I grant what you say; but you must not conclude that because the Ecclesiastical Courts ought not so to do, that therefore they never do it: for I can prove they have often *left undone those things they ought to have done, and have done those things they ought not to have done*; besides I hear them sometimes confess it in publick.

*Dr.* But there's a worse business than this comes to! The Bishops have not the power to excommunicate, which they sometimes had by Law; and it were dangerous to throw those thunderbolts at mens heads, which with one blast of courageous contempt would signifie nothing. How know they but the frequency and commonness of excommunication may tempt some prying eyes, and searching inquisitive heads to examine the Bishops authority, and so by sifting it to the bottom, discover to the nation, that what makes now such a noise, is a meer noise, and nothing else; that their Canons are either charged with white powder which gives no report, or but with powder which does no execution? The world is hugely awakened, and we that are not concerned in your present vexations and sufferings, yet do not know but it may be our turns, or our childrens next; and therefore I conceive the Reverend Fathers of our Church are so foreseeing and wary, that they will not exercise an arbitrary power against Law, being conscious to themselves, that upon a legal scanning they must be baffled. And because I suspect that you Fanaticks take up an evil report against our Prelates upon slender or no ground, you must excuse me if I suspend my belief herein, till I receive more clear evidence of the fact.

*Burg.*

*Burg.* I am sorry I have so far forfeited my credit with you, that you suspect my Information; 'Tis but this morning I received a Letter, that this way of Excommunication was adjudged the fittest expedient to deprive us of our Votes; and do but enquire, and you will find it true, that in the Committee of Elections it was objected against some that they were unqualified to elect, because cast out of the Church: and I can tell you of one who was served so, to hinder his election; but it would not do, the people were more zealous for him than before: And further, I my self have been excommunicated for not coming to my Parish-Church.

*Dr.* And did it not strangely affect you? did you not find some secret blasting upon you by it?

*Burg.* Really *Sir*, I had been filled with superstitious fears from my infancy, that Excommunication was a terrible weapon; and I believe if managed according to its primitive institution it would be so; and therefore when I was sentenced, I had some horror come upon me, though I knew not what I had done to deserve it: The next morning, I remember I looked upon my wrists to see if the Plague-tokens did not appear; if my head did but a little ache, I presently thought the Excommunication began to put forth its mortal operation; but after a while I found my self to eat and drink as heartily, to sleep as soundly, as if I had been laid in the bosom of the Church.

*Dr.* I protest it's a wonder to me that you were not eaten up of Lice or some other Vermin! or that some immediate judgment did not seize you!

*Burg.* Doctor, I had never had my health better in my life; and when I had once a little examin'd the matter, I could find nothing but anger, spleen and passion, that had whetted the Sword against me: and I began to be at great ease: and your Discourse has given me some intimations that the proceeding is illegal, as well as I believe it inscriptural; and therefore if you please, let me hear your judgment upon these points; and in the first place, why you judge that Excommunication in its original design was not intended to deprive men of their civil Rights, but only of their Church-priviledges? And if I be in the Laches for non-appearances, I'll shift as well as I can.

*Dr.* I must confess to you, for me to speak to the point, is somewhat out of my way, and I am loth to thrust my sickle into the Theological harvest; and shall therefore only nakedly tell you, that I find these ends in Scripture of that sacred ordinance:

1. For the humbling, shaming and reforming of a scandalous professor.
2. That

2. That the glorious Religion of our Lord and Saviour may not be reproached in the world : for if the Church shall continue notorious offenders in its Communion, what will they that are without say, but that the Church allows and justifies such Villanies ? whereas when the Church shall rid her hands of such, whom neither personal nor publick reproofs, admonitions, exhortations and counsels will reclaim, she may wash her hands in innocency, and justifie herself to be clear in this matter.

Hence it appears that the ends are purely spiritual, answerable to the kingdom Christ came to set up in the world, and the means which he used to prosecute that end : And this will appear, if you consider,

1. Those Scriptures wherein this power is given to the Church ; Matt. 16. 19. *I will give unto thee the keys of the kingdom of heaven, and whatsoever thou shalt bind on earth, shall be bound in heaven ; and whatsoever thou shalt loose on earth, shall be loosed in heaven : They were the keys of the kingdom of Heaven, not of an earthly kingdom.* Matt. 18. 15, 16, 17, 18. *If thy brother offend thee, go and tell him his fault between thee and him alone ; if he shall hear thee, thou hast gained thy brother : But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established : And if he shall neglect to hear them, tell it unto the Church ; but if he neglect to hear the Church, let him be unto thee as an heathen man and a publican :* There's the furthest the Church can go. I hope you do not think but a Heathen hath a right to his Estate ; you do not think that dominion is founded in grace ; or that he is no Thief that steals from a Heathen or a Publican. 1 Cor. 5. 4, 5. *To deliver such a one unto Satan, for the destruction of the flesh, that the spirit may be saved in the day of our Lord :* You see the end is to destroy the flesh, vile affections, base lusts and corruptions, and not to destroy propriety in our Freeholds, Lands and Tenements.

2. It was impossible at the first planting of the Gospel Church, that ever such a pretended power should be vested in Ecclesiastick persons, seeing that for Three hundred years after Christ, when the Church was more pure and like its Originals, there was no Christian Magistrate.

3. It's evident, Christ himself, the only head of the Church, in all civil things gave subjection to Magistrates, paid tribute, and commanded others to *give to Caesar the things that were Caesars :* nay more, was subject to the commands of his Mother and supposed Father ; did not violate oeconomical or political Rules, but openly declared his kingdom was not of this world ; nor was he a judge in civil matters, nor would he suffer his zealous servant to draw a sword in his cause, a

Spiritual Kingdom must be set up by spiritual means; *If my Kingdom were of this world, then would my servants fight, (saith our Saviour).*

4. Christ rules in the hearts and consciences of his Subjects, where the Princes Writ does not run, where he hath no jurisdiction; and by his Word and Spirit he brings his Subjects into his Kingdom; and if they decline and depart from him, he reclaims, reduces them by the same ways and means. The whole tenor and temper of the Gospel abhors compulsion or outward violence; or if he allows compulsion, 'tis not by Fire and Faggot, Racks, Gibbets, Imprisonments, Mulcts, Fines, Bodily penalties, which are but new devices of an Apostatized *Roman* Synagogue, who took up carnal engines and weapons when they had set up a carnal Religion.

5. Therefore this course was introduced by the degenerated Church when it had lost the spirit of true Christianity, and not daring to trust to Christs Remedies, had recourse to human policies and outward force, to rule the world, and keep men in ignorance and awe, that they might enjoy their grandeur and external glory with more security. Now that Antichrist did endeavour to subdue the civil rights and liberties of men to his Ecclesiastick interest, is plain, Rev. 13. 16, 17. *He causeth all both small and great, rich and poor, free and bond, to receive a mark in their right hand, or in their foreheads; And that no man might buy or sell save he that had the mark, or the name of the Beast, or the number of his name.* And Church-men have ever laboured to make this point, that none might be capable of making their wills, of suing in any Court for their right, of choosing their Representatives, if they did not conform to their Ecclesiastick Canons and Constitutions.

But how then came the Church to engross such power to her self, which was so unsuitable to the nature and temper of the Christian Religion?

Dr. The Civil Magistrate in process of time becoming Christian and reverencing the Churchmen for their late courageous sufferings for the Truth of Christ, thought they could never enough load them with privileges, nor trust them with power, nor endow them with revenues, which in a while became the bane and poison of Piety, and the Church as it grew rich and great, grew also intoxicated with her own honours and preferments, and at last grew up to that height of spirit as well as of wealth, that she began to trample the civil power under her feet, excommunicating Emperors and Kings, interdicting Kingdoms, and with her *Authentica* terrifying the low-spirited Laity, that they durst not once matter at her usurpations and tyrannies. But as 'tis the common fate of all extremes, they strained the string so high, that at last

last it crackt ; and loaded the people with such intolerable burdens, that they began to kick, and resolv'd to break the yoke which must else have broke their necks ; and to discharge themselves of that weight which must needs break their backs ; and all this out of pure necessity : for it's not to be conceived how much a people will bear from their spiritual Task-masters, before they refuse obedience ; so that if it were possible for Church-men to be wise, and use any moderation in their oppressions, they might make them carry incredible weights, no Camel being more fitted for servility than such Animals are. The Pope once Interdicted the State of *Venice*, there was no Divine Service, no Sacraments administred in all the territories belonging to the State ; but the Senate strenuously and zealously roused up themselves against their encroachments ; so that the Church was glad to recall her Thunder-bolts, and sheath that Sword which has no other edge than what ignorance, superstition, and tame servility gives it.

*Burg.* Truly I am in hope our Church will be wiser, remembering the examples of former times ; and I am the more encouraged so to hope, because we have many considerate, prudent, moderate persons amongst us, who as they condemn these rigors, so are very apprehensive of the consequences.

*Dr.* The cruel and treacherous *French* little thought that their horrid Massacre at *Paris*, would have encreased the number of *Hugonots* ; that their blood would have been the seed of a more numerous progeny of Protestants : And perhaps as little were our Prelates aware, that by their severe prosecutions of those Laws which they had suggested, the number of Dissenters would have been doubled, if not trebled, in twice seven years since His Majesties happy Restauration ; and without pretending to a spirit of prophesie, I can certainly foretell, that if they proceed to use Excommunication to deprive the Subjects of their Votes in Elections, they will yet double and treble the multitudes of Fanaticks ; and I make this judgment upon these grounds :

1. Because men of no severe consciences, nor of any great concern for Religion, will soon be made sensible of an invasion upon their civil rights and priviledges : the quarrel will not be any longer Religious, but Civil ; and they that care not what becomes of worship, discipline or doctrine, yet are hugely solicitous what becomes of their temporal concerns, and are exceeding tender in the matter of *meum* and *uum*.

2. They will say, they know not where this usurpation may rest ; seeing by the same reason, that by Excommunication they may deprive us of our Votes in Elections, which are founded upon our Free



holds, they may in time pick a quarrel with our Freeholds themselves; and the temptation is stronger, for our Freeholds will do them more service than our Votes: Who knows where such encroachments may stop? they are higher already than in *Turkey*, where the Christians under the *Ottoman* yoke, yet may enjoy their Estates, without worshipping *Mahomet*, or subscribing the *Alcoran*.

3. Experience tells us, that the persecuted party alwayes gains pity and friends, and the persecutors hatred and ill-will; especially when the sufferers are made so, upon an account which is, or may be common to all the people.

*Burg.* I confess, I can see no reason for any such Church power; but if the Law of the Land hath entrusted them with it, who can help it?

*Dr.* The Law hath not undone you so much, as you have undone your selves; for as if you had conspired with them (your pusillanimity, with their encroaching humour) you have insensibly lost one thing after another, till you have almost lost all: weakness is made an easie prey to power; timorousness to daring boldness; but let me tell you one thing, that our common Law is ancients than *Austin* the Monk; and before his time we find not that the Grand *Seignior*, or Sultan of *Rome's* Horse ever set his foot on English ground: and though the Clergy arrived at a vast height after his days, yet his nails were pared, his wings clipt by the Statutes of *Mortmain*, and that against Provisions; and at last by *Henry* 8. so crusht, that it could never yet regain its full dominion and sovereignty. Queen *Mary* endeavoured to have restored all again to that See, by the counsels of those very Clergy-men, who in *Henry's* time renounced the Popes supremacy; but her reign being short, Queen *Elizabeth's* happy coming to the Crown, shut the Pope out of doors.

*Burg.* But there were very terrible Laws made against Dissenters even in her reign; and the edge of those Statutes which were made against Popish Recusants, are now turn'd against Protestants; just as the Inquisition, which at first was set up in *Spain* against the *Moors* and *Saracens*, was afterwards level'd against the Protestants.

*Dr.* You say true: And it hath been the great wisdom of our Prelates, so to order the matter, that whatever Law was designed against the enemies of the State, they could make use of to ruine those whom they had made their enemies; but still all our Laws, secured in some good measure our civil Liberties, and especially that great one of chusing our Representatives.

*Burg.* I should not repent my stay with you, if you would favour me with a particular discourse upon that subject.

*Dr.*



Dr. Turn over then at your leisure the Statutes of 7 of Hen. 4. chap. 15. the 1 of Hen. 5. ch. 1. the 6 of Hen. 6. ch. 4. 8 Hen. 6. ch. 7. the 10 of Hen. 6. ch. 2. the 23 Hen. 6. ch. 15. and 11. 35 Hen. 8. ch. 11. all which together instruct in the qualifications of the Electors and elected, and you will find that Citizens are to be chosen by Citizens; Burgeſſes by the Burgers; Knights of the Shires by the Inhabitants of the Counties, who have Lands in freehold to the clear yearly value of Forty Shillings and upwards, without any the least shadow or colour of excluding any otherwise duly qualified upon the account of Excommunication, or any spiritual or Ecclesiastical irregularity: And it's a strong presumption, and something more, that in some of these many Laws on purpose made to acquaint us with the qualifications of Electors and elected, mention had been expressly made, or implicitly hinted, if such had been the intent and meaning of the Legislators, that excommunicated persons should have been debarred that priviledg. It must be acknowledged, that in an affair of so high and momentous concernment, it is absolutely necessary, that it be certainly known who are to chuse, and who to be chosen, seeing that the persons so chosen are to be of the Kings great Council, to advise him of the grand and arduous affairs of the Kingdom, and to have a share in the legislative power: We may therefore confidently say, *Non expressa non nocent*; no man ought to be prejudiced by that, wherein the Law is silent: Besides we have no president in any Case, no not in the times when the Clergy were most rampant, and their power most exalted to overtop the poor Laity, that any were deprived of this priviledg, upon that weak pretence, because they were blasted with Excommunication: Nay, an *Outlawry after judgment*, which is the highest incapacitating of a person that can be, yet does not disable a person from enjoying this radical priviledg, as is evident in the case of Sir Robert Holt, in the late Seventeen years long Parliament. I am bold, further to assert, That nothing but an Act of Parliament can disable him from acting, who is enabled by an Act of Parliament to act: For if an Excommunication can incapacitate whom the Statute hath capacitated, it would follow, that the Clergy hath a power paramount to that of the King and Parliament; which for them to assert, would make them guilty of Treason, or at least incur a *premunire*; and for us to grant, would stigmatize us with the brand of the greatest folly.

Burg. Well, Sir, I see we poor people may lose all our priviledges if none will appear for us; pray proceed, perhaps I may pick up a little crumbs of courage, and get something to plead my own cause.

*Dr.* I will only add this one consideration; That if Excommunication had these dreadful effects, the consequences would be fatal to *England*: For,

1. All our liberties and priviledges whatever would hang at the Bishops Girdles, we should be freemen only at their pleasures, so long as we carried fair quarter with them, and their mutable humours; for though at present you suppose that all our Bishops are good men, such as will not use such a power to reign, as if it were intrusted in their hands (you see, I suppose, almost impossibilities, to make the objection as strong as may be) yet they themselves though good men, are but men, and liable to passion, prejudice, error and misinformation (besides, who knows what sort of creatures may succeed them); And if they observe the people inclinable to elect such as perhaps, though every way loyal and firm Potestants, yet not to their tooth in point of Church-dividing, I had almost said Church-ruining Ceremonies; whether may not they give a cast of their office, and shut us out of the Church doors and the Town-hall at one clap? And then in effect the Bishops must chuse our Parliaments, which most wise men at this juncture do not judge expedient or adviseable.

2. Nay, it might follow, that notwithstanding the Kings Writs to elect, they might pick a hole in the Coat of every Citizen in a City, or Burgesse in a Burrough, especially where the Election is confined to some few; and so those Burroughs and Cities should send up no Representatives: Nay more, perhaps there is scarce a person in the Nation; but upon one account or other hath a blot to hit; for if almost a third part, as is supposed, of the Nation, upon one account or other be Dissenters, these may be all chastised; and the rest either as Usurers, or incontinent persons, or common fame thereof, or for Simony, or Perjury in Ecclesiastical Courts, or for Idolatry, or other pretended excommunicable causes, be also cast out of the Church, and to their elections prove nullities; we must have no Parliament, till we have undergone fine and rancome to the Bishops.

3. But suppose of their grace and meer charity, they should suffer a House of Commons to meet, though lame and maimed, might they not upon any small pike excommunicate all the temporal Lords, and deprive them of the priviledg of their Peerage as to sitting in Parliament? Nay, might they not when their courage had been blisht with success, proceed to excommunicate His Sacred Majesty, and thereby disable him from giving the Royal assent to any Bill? And then might not the two Arch-bishops agree to excommunicate the rest of the Bishops, and so themselves alone rule the rest?

*Burg.*

*Burg.* These are wild suppositions, such as we cannot ever fear will come to pass.

*Dr.* You mistake, They are not suppositions of what will be; but consequences which may be, if once we admit that Excommunication deprives any person of Vote in Election, or capacity of being Elected to Sit, and serve in the High Court of Parliament. And grant but that one absurdity, I do not see but you must admit the possibility, or however the reasonableness of all the rest of fatal consequences, which you call wild suppositions. And I'll mind you of one thing more, that if only Protestant Dissenters were Excommunicated by the Bishops and their Officers for not coming to Church, there being too many thousands of them; It would make a cry like that of the Land of *Egypt* when the first-born were destroyed, and certainly draw the just *Odium* of the confederate part of the Nation upon them, as Enemies to the common peace and welfare of *England*.

*Burg.* But still we lye liable to the Laws for our absence from Divine Service; and if they get us upon that lock, we shall be cast in Prison, and so lose our priviledg of Election.

*Dr.* I see you Dissenters are mainly or only stricken at in this business, but I hope you will meet with more impartiality from the Civil Magistrate; for they know well that those Laws upon which you are prosecuted were designed against *Popish Recusants*, and therefore you ought not either temporally or spiritually to be prosecuted upon them.

*Burg.* I wish you could clear that point; for though it would not recover what I have lost, yet it may for the future prevent my losing all the rest.

*Dr.* It seems very evident that those Laws were not made against Protestant Dissenters, because Protestant Dissenters, however bewailing the burden, did frequent the Church; And the Tenor and Nature of those, speak their design, which was to reclaim the *Papists*, and such as were *Popishly* affected, from the use of *Popish* forms of Prayer and Ceremonies. View impartially the Statutes of 2d and 3d of *Edward VI. ch. 1.* And 5 and 6 *Edward VI. ch. 3.* which last Statute being Repealed 1 *Mar. ch. 2.* was Revived 1 *Eliz. ch. 2.* Afterwards an Act was made 23d *Eliz. ch. 1.* for the retaining the Queens Subjects in their obedience. In the preamble whereof it is mentioned, that divers evil affected persons have by other means than Bulls or Instruments Written, or Printed, endeavoured to withdraw divers of the Queens Subjects from their Natural Obedience to her Majesty, so as by the said usurped Authority of Rome, and in respect of the same

to perswade great Numbers to withdraw their Obedience from her Majesties Laws established, for the due service of Almighty God: And then says—— for the Reformation whereof, be it Enacted, &c. And then proceeds to Enact the penalty of 20 l. per menssem, for them that do not come to Church; and then comes with a *Proviso*; That this Act shall not extend to take away or abridge the Ecclesiastical censures, but that the Archbishops, and Bishops, or other Ecclesiastical Judges might do as they before lawfully did or might have done, and had ben given them by the Statutes of 2d and 3d of Edward VI. ch. 1. And the 1st of Eliz. ch. 2. which plainly shews against whom those Laws where to be Executed, as well in reference to Ecclesiastical censures, as civil penalties, viz. Those that were drawn to obey the usurped Authority of Rome, from their Natural obedience to her Majesty, and Her Laws, established for the due service of Almighty God. As also the preamble of that Statute, 1 Jacob. ch. 5. shews that, and other Laws to have been made against *Papists*, where there is not the least mention, or intimation of Protestant Dissenters; There being a clause in this last mentioned Statute, whereby Provision is made in the case of *Recusants* Conformity, and to prevent them sending their Children beyond the Seas to *Popish Seminaries*; which Dissenters of no perswasion whatever, were ever known to have done. Afterwards by another Statute of 3 Jacob. ch. 4. in the preamble thereof it is mentioned, That whereas divers *Jesuits*, *Seminaries* and *Popish Priests*, daily do withdraw many of his Majesties Subjects from the true service of Almighty God, and the Religion established within this Realm, to the *Romish Religion*, and from their Loyal Obedience to his Majesty——Therefore in the body of the Law it is Enacted, That a *Popish Recusant* shall be as Excommunicated; which plainly shews who by that Law were to be punished for not coming to Church, and also who were to be Excommunicated; which yet is so far from debarring any person from his Natural priviledg of Electing or being Elected, that it provides, that such persons may sue or prosecute any action or suit concerning their Lands, or for their issues or profits thereof, which are not seized into the Kings hands; That liberty being a Fundamental, and concerning the publick, cannot be forfeited by any private Mans default, nor indeed otherwise than by Act of Parliament, by which it was established (as is before mentioned). But because some of the *Papists* to escape the penalties of the Laws, would come to Church, the Statute of 3 Jacob. ch. 4. for further discovery of them, requires these Conformed *Recusants* to receive the Sacrament or  
Com-

Communion yearly, under a penalty; and requires the Church-wardens and Constables once every year to present the monthly absence of *Popish Recusants* from Church; And punishes the neglects, and rewards the performance of their duties herein. Consider also whether by reason of the Kings power by that Statute, to choose two thirds of their Estates instead of the 20 *l. per mensem*, it be not meant only for *Popish Recusants* not coming to Divine service, because many of them of Estates of great yearly value, did for the most part employ them for the maintenance of superstition, and the *Popish Religion*, and to the Relief of *Jesuites, Seminaries, and Popish Priests*, and other persons dangerous to the State, which could be intended of none but the then Conspirators in the *Gunpowder Treason*. And till within these last nineteen years these Laws were never interpreted against or executed upon Protestant Dissenters, but are now contrary to their plain and genuine meaning strained to a sence they will not bear, as if the design of some were only to encourage *Papists*, and suppress Protestants. And I might further ask where there hath been one *Popish Recusant* prosecuted or excommunicated upon this Statute for many years last past? But how many Protestants have been cast out of the Church, and into Prison upon it! It may be further observed in the Act, that there is a punishment assigned for weekly absence from Church; And a *Proviso*, that the said Act should not extend to take away, or abridge the Authority, or Jurisdiction of the Ecclesiastical censures for any cause or matter, but that the Kings Commissioners in causes Ecclesiastical, the Archbishops, Bishops, and other Ecclesiasticks might do or proceed as they might have done before. All which (as is before mentioned) shew that only *Popish Recusants* were lyable to those censures for not coming to Church, the Laws being made so expressly against them; which is the more evident, for that there was a temporary Law made 35 *Eliz.* ch. 1. for Seditious Sectaries that would not come to Church, with a distinct penalty till Conformity, which evidently proves they were not intended to be within the compass of the other Laws of *Recusancy* about absence from Church; for if they were, why was this Law so directly level'd against them? And had they so been, the poor Dissenters might have been twice punished for the same offence, which as 'tis unreasonable, so our Laws seem to abhor the injustice.

*Burg.* I wish you could as easily satisfy the Prelates as you have done me: but as we are apt to believe that to be true, which 'tis our Interest should be so, so the Ecclesiasticks will be as loth that should appear illegal which makes so much for their advantage.

Dr.

*Dr.* You say true, but let them be pleased or displeased it's all a Case, I am confident those Laws were never intended against such as you are: And I'll say a greater thing than I have yet said, That the Ecclesiastical Courts have no power at all to Excommunicate any person whatsoever, and then to be sure you need not fear losing your voice in Elections.

*Burg.* Make out that, and you do their work for them; and I shall not repent that I have vetur'd an Excommunication by my discourse with you.

*Dr.* I can easily do that, only you must muster up a little patience. You will find by several Statutes in the time of *Hen. 8.* how the power and authority which the *Pope* claimed in *England* (which was great, yea, but all in a manner) with his revenues and profits were by degrees lessened, viz. 21 *Hen. 8. c. 13.* 23 *Hen. 8. c. 9.* 24 *Hen. 8. c. 12.* taking away Appeals to *Rome*, 25 *Hen. 8. c. 20.* not printed; for restraint of *Annats* and *First-fruits* from the See of *Rome*, 25 *Hen. 8. c. 19.* the submission of the Clergy to the King to make no Canons without his Assent, 25 *Hen. 8. c. 20.* for Election and Consecration of Archbishops and Bishops within this Realm, and 25 *Hen. 8. c. 21.* Exonerating the Subjects from Exactions payed to the See of *Rome*; and for Licences and Dispensations within this Realm, without suing further for the same, till at last came that killing Statute, that stabbed the *Pope* and his Clergy to the heart, 26 of *Hen. 8. c. 1.* Declaring the King to be Supreme Head of the Church of *England*, and to have Authority to reform and redress all Errors, Heresies and abuses. Then 26 *Hen. 8. c. 14.* there was an Act for Nomination and Consecration of Suffragans within this Realm; and 27 *Hen. 8. c. 15.* the King had power given him to nominate thirty two persons of his Clergy and Laity for reforming the Ecclesiastical Canons, and 28 *Hen. 8. c. 10.* an Act extinguishing the Authority of the Bishop of *Rome*. Thus you see how the power of the *Pope* and his Clergy, by degrees was dwindled into nothing. And as their power was lessened, so by degrees the Kings power in Ecclesiasticals increased: For you will see by the aforementioned Statute of 26 *Hen. 8. c. 1.* what great power in Ecclesiastical matters the King had given him, which at that time was recognized by the Clergy in their Convocation; viz. Declared Head of the Church, and to have all the title and style thereof, with all Honour, dignities, preheminencies, jurisdictions, priviledges, authorities, immunities, profits and commodities thereunto appertaining, and to have full power and authority from time to time, to visit, repress, redress, reform, order, correct, restrain, and amend all such errors,



errors, heresies, abuses, offences, contempts and enormities whatsoever they be, which by any manner of spiritual authority, or jurisdiction, ought or may lawfully be reformed, most to the pleasure of Almighty God, &c. any usage, custom, foreign Laws, foreign authority, prescription, or any thing or things to the contrary hereof notwithstanding: As also by the 25 Hen. 8. c. 19. the Clergy submitting themselves to him, promising, *verbo sacerdotii*, never to enact any Canons without his assent, the Convocation to be assembled by the Kings Writ; to be referred to Thirty two men of the Kings appointing; to continue such of the old Canons as they thought fit should be kept, so that the Kings assent under his great Seal were first had to them; but provided that no Canons or Constitutions should be made or continued by the Thirty two persons, or put in execution by authority of the Convocation, which should be contrary or repugnant to the Kings Prerogative, or the Customs, Laws or Statutes of this Realm. Now by what Canon or Constitution Ecclesiastical, or exercise of Ecclesiastical power can men be prejudiced or hindered in their choice of Parliament-men? We see that care is taken, that their power should not over-top the civil power; nay, is in some respect inferior to it, and must give place thereto, we having both Custom and Statute for our choice of Parliament men, if qualified as the Laws appoint. But to my present business more closely, all power whatsoever spiritual was hereby vested in the Crown in words large enough, the Bishops themselves having their election and all their power, the use and exercise thereof from the King, and dependence on him: For can we think that there was any ordinary or judicial power left for them, when as all spiritual jurisdiction whatsoever was vested in the Crown? And will they make Excommunication to be no judicial act, or to be no effect of spiritual jurisdiction? And if it be (as certainly it is) a judicial act, and an effect of spiritual jurisdiction, then it must of necessity be derived to them from the Crown, which must be by Commission; and as an argument that they have no exercise of spiritual power, but what they can derive from the Crown, let's have recourse to another Statute, viz. 1 Ed. 6. c. 2. titled the Election of Bishops, and what Seals and Style they and other spiritual persons exercising jurisdiction Ecclesiastical shal use, (which Statute directly tells us, that all authority of jurisdiction, spiritual and temporal, is derived and deduced from the Kings Majesty as supream Head of the Church). Thereby it is enacted, that all Sum-

mons and Citations, or other Process Ecclesiastical, shall be made in the name, and with the stile of the King, as it is in his Writs original or judicial at the common Law, and that the Teste thereof be in the name of the Archbishop or Bishop, or other having Ecclesiastical jurisdiction, who hath the commission and grant of the authority Ecclesiastical immediately from the Kings Highness, and that his Commissary, Official, or Substitutes exercising jurisdiction under him, shall put his name in the Citation or Process after the Teste; and that they should have in their Seals of Office, the Kings Highness Arms decently set with certain characters under the Arms, for the knowledge of the Dioceses, and shall use no other Seal of jurisdiction, but wherein his Majesties Arms be engraven. It might be worth inquiry what hath been Ecclesiastical practice of late, and if they that exercise spiritual Jurisdiction have practised otherwise, whether they have not all of them incurred a Premunire? For though this Statute among others was repealed, 1 *Maria* c. 2. yet 1 *Jacobi* c. 25. the said Statute of Repeal was repealed, and so this Statute became in force again: Now if all they could do, must be done in the Kings name, and by his power and authority, pray then, what ordinary or extraordinary power can our Ecclesiasticks have besides? Now, though the said Statute of 26 *Hen.* 8. c. 1. about the Kings Supremacy was repealed 1 & 2 *Ph.* and *Mary*, c. 8. the Kings Supremacy was taken off, and the Popes Supremacy restored, and I do not find it was revived by Queen *Eliz.* yet I find 8 *Eliz.* c. 1. this Statute mentioned; and in this Statute 8 *Eliz.* c. 1. it's mentioned that he was justly and rightfully thereby recognized and acknowledged to have the supreme power, jurisdiction, order, rule, authority over all the Ecclesiastical State, and the same power, jurisdiction and authority did use accordingly; and so was used all the time of *Ed.* 6. till the aforesaid Statute of Repeal of Queen *Mary*; in which Statute of Repeal of the 1 and 2 *Ph.* and *Mary*, c. 8. I find the Clergy making an humble supplication, that Ecclesiastical jurisdiction might be restored to them, and that all Laws which did hinder it might be abrogated, and that in the very words following, as it is in the *Latin*; *Insuper Majestatis vestris supplicamus pro sua pietate efficere dignemur, ut ea qua ad jurisdictionem nostram & libertatem Ecclesiasticam pertinent, sine quibus debitum nostri pastoralis Officii, & cura animarum nobis commissa exercere non possumus, nobis, superiorum temporum injuria ablata restituantur, & ea nobis, & Eccle-*  
sia

*sia perpetuo illaesa & salva permaneant, & ut omnes leges qua hanc nostram jurisdictionem & libertatem Ecclesiasticam tollunt, seu quovis modo impediunt, abrogentur, &c.* Now do they pray that they may be restored to those things that belong to their Ecclesiastical liberty and jurisdiction, without which they could not exercise the duty of their Pastoral Office, and the care of Souls committed to them: Now, if without the exercise of Excommunication (as I know they will say) they cannot exercise the duty of their Pastoral Office and the care of Souls, then they must acknowledg that the power of excommunicating was once by Law taken away from them, and given to the King, and which they pray here to be restored to them, and which by this Statute was accordingly restored to them; and if so, then what became of it when this Statute of Queen Mary was Repealed, 1 Eliz. c. 1. and the same Ecclesiastical jurisdiction was again restored to the Crown? Certainly then the Clergy wanted the same power of Excommunication that they prayed to be restored to in the Statute of Queen Mary; and so then are beholding again to the Queens commission, for whatsoever power they did or could exercise in spirituals; for by the Statute of 1 Eliz. c. 1. it was enacted that all foreign power Ecclesiastical should be abolished; and that such jurisdictions, privileges, superiorities, and preeminencies, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power, or authority, hath heretofore been, or may lawfully be exercised or used, for the visitation of the Ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts and enormities, shall for ever by authority of this present Parliament, be united and annexed to the Imperial Crown of this Realm:

And that your Highness, your Heirs and Successors, Kings or Queens of this Realm, shall have full power and authority by vertue of this Act, by Letters Patents under the great Seal of England, to assign, name and authorise, when, and as often as your Highness, your Heirs and Successors shall think meet and convenient, and for such, and so long time as shall please your Highness, your Heirs or Successors, such person or persons being natural born subjects to your Highness, your Heirs or Successors, as your Majesty, your Heirs or Successors shall think meet to exercise, use, occupy, and execute under your Highness, your Heirs and Successors, all manner of jurisdiction, privileges and preeminencies,

cies in any wise touching or concerning any Spiritual or Ecclesiastical jurisdiction, within these your Realms of *England* and *Ireland*, or any other your Highness Dominions and Countreys, and to visit, reform, redress, order, correct and amend all such errors, heresies, schisms, abuses, offences, contempts and enormities whatsoever, which by any manner Spiritual or Ecclesiastical power, authority or jurisdiction, can, or may lawfully be reformed, ordered, redressed, corrected, restrained or amended, to the pleasure of Almighty God, the increase of vertue, and the conservation of the peace and unity of the Realm; and that such person or persons so to be named, assigned, authorised and appointed by your Highness, your Heirs or Successors, after the said Letters Patents to him or them made and delivered, as is aforesaid, shall have full power and authority by vertue of this Act, and of the said Letters Patents, under your Highness, your Heirs or Successors, to exercise, use and execute all the premises, according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary in any wise notwithstanding.

And then immediately after ordains the Oath of Supremacy; so that you may see that the Crown lost nothing by the Repeal of the Statute of the 26 Hen. 8. c. 1. all Spiritual jurisdiction being absolutely granted to the Crown by this Statute, and no Clergy-man or other can claim any spiritual power, but they must derive it from the Crown, unless they will deny the Kings Supremacy in part, which they do, that claim a power without him, or distinct from him; but since this Statute, what Courts they kept, and what Ecclesiastical censures they exercised was by vertue of authority derived to them from the Crown and no otherwise.

Now 17 Car. 1. in c. 11. the aforesaid branch of the Statute 1 Eliz. c. 1. whereby the Queen and her Successors were impowered to authorize Commissioners by her Letters Patents to exercise Ecclesiastical jurisdiction, was Repealed; so that by that means the Bishops Courts standing then by the Kings Commissions fell to the ground, and their authority ceased, by which they stood, as well as that of the High Commission Court (then pretended to be only aimed at) in regard all power was taken away from the King to give them Commissions, by Repealing the Branch of the aforesaid Statute, 1 Eliz. c. 1. so that now they could not excommunicate people as before they could, Ecclesiastical power being vested in the Crown, the exercise of which depending on the Kings Commission,  
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the Kings power of granting Commissions ceasing, their power must necessarily cease, not only of Excommunication, but also all other judicial power that they before had and exercised: Let them shew, if they can, what spiritual power they could exercise without the Kings Commissions.

But you will tell me that this act is Repealed, *13 Caroli 2. c. 12.* But that is a mistake too; for first it declares, That by the Act of *17 Car. 1. c. 11.* no ordinary power or authority is taken away from the Archbishops, or Bishops, or any other persons named as there aforesaid, but that they and every of them exercising Ecclesiastical jurisdiction, may proceed, determine, sentence, execute, and exercise all manner of Ecclesiastical jurisdiction, and all censures and coercions appertaining and belonging to the same before the making of the recited Act, in all causes and matters belonging to Ecclesiastical jurisdiction according to the Kings Majesties Ecclesiastical Laws, used and practiced in this Realm, in as ample manner and form as they did, and might lawfully have done before the making of the said Act: Now I would fain know of any one, what ordinary power of coercion they had, distinct from what they had by Commission from the King; for the *26 Hen. 8. c. 1.* the Pope claimed all Spiritual jurisdiction, and the Clergy exercised it under him; then the King by the aforesaid Act had all Spiritual jurisdiction annexed to the Crown, and the Clergy exercised it under him: And if the King had all spiritual jurisdiction annexed to the Crown, what then was there left for the Clergy to have? Nothing but what the King was pleased to leave out of the Crown, which was nothing at all; (where then was ordinary power of coercion I throw) having none but what they exercised by Commission from him, which now being taken away by the repealing of the branch of the Statute of *1 Eliz. c. 1.* and which by this last Act of *13 Car. 2. c. 12.* stands repealed, and therefore our Ecclesiasticks have none at all now; neither can they justify the keeping Courts Ecclesiastical, or exercising any censures, or make, or execute any sentences of Excommunication, or exercise any other judicial power; for this Act only says, they may exercise all manner of Ecclesiastical jurisdiction and censures, according to the Laws Ecclesiastical used and practiced in this Realm, in as ample manner and form as they did and might Lawfully have done before the making of the said Act; which clause gives them no new power, only seems to restore what they formerly had; which if they had none, they are restored to none,



as indeed they are not, for they had none to be restored to, they not having any then, but what they had by vertue of the Kings Commissions; and now they have no Commissions since the Kings Restauration, and therefore I conceive that those that have been so free of their Excommunications may be indicted on the Statute of Premunire; for what they have done of this kind, they having done without Commission (I conceive) they have done without Law, all being done, *coram non iudice*, having carried off what they have done hereir with meer power without Law, the Courts of justice favouring them more than ordinary; so that the stream running on their side, it was hard for any particular persons to grapple with them: and then they had such a great interest in the late Free-Free Parliament, of whom, when time was, they might have had almost any thing done in their favour: What almost would they have refused to do for them, who restored the Bishops to their places in the House of Lords? But yet there being some wise men among them, that looked well to the main concern of the Nation, would seem, by flourishes of great words, to give them great matters, and indeed gave them just nothing at all; for restoring them only to their pretended ordinary power of coercion (which its like they were made believe was great) which was just nothing at all, they not having any, were restored to nothing; and then the Repealing the Act of 17 Car. 1. c. 11. (but excepting what concerns the High Commission Court, or the new erecting of some such like Court by Commission) and absolutely declaring of the aforesaid Branch of the Statute of 1 Eliz. c. 1. to stand repealed, it was not possible for them to have any Commissions for exercising spiritual jurisdictions, that branch of this Statute standing repealed, which at first enabled the King to commissionate them for the exercise thereof: This Act also nulls the Oath *ex Officio*, and declares, *in Terminis*, That this Act is not to give them any power to exercise any Ecclesiastical jurisdiction or censure, which they might not by Law have done before the year of our Lord 1639. nor to the confirming any Canons made 1640. nor any other Canons not before confirmed; so that you see none of their Canons are good, not confirmed by Parliament: By which it appears, they had almost as good have let that Statute of 17 Car. 1. c. 11. have stood; for they got nothing by Repealing it, but the taking off the penalties for tending the oath *ex Officio*, all other things being thereby ratified: The truth is, they were a little gull'd, but so much the better for the people.

Now



Now, by this time (my good Friend) I hope you are satisfied that the Bishops cannot excommunicate any for not coming to Church, to deprive them of the benefit of their choice of members for the ensuing Parliament; for if they can have no power of exercising Excommunication, but by the Kings Commission, and they have not, nor cannot have any Commission from him, who hath all spiritual power vested in him, but disabled by Law to commisionate them; then it will follow, that they have no power to excommunicate any for not coming to Divine Service, or for any thing else; and so thou needest not be afraid of that Bug-bear.

*Burg.* Truly, Sir, you have given me good satisfaction in this point; one would think our spiritual men would not have made such a stir, thus to trouble us, having no authority for what they do herein; But what would you have me to do in my case? should I appear to day or not, at our Bishops Court? and what will you have me to do therein?

*Dr.* You need not wonder they are so ready to grasp at, and so willing to hold what power they can get, for they get money by it, and keep an awe thereby on the meaner sort of people: But now day-light begins to appear; if some good sturdy English man, that values not the spending of a little money against them, would pull a crow with them, he might do more good to his Country thereby, than Colonel King did against Sir Edward Lake the Chancellor of *Lincoln* (though that business did discover to the world in part what little power they had) in discovering to the world how meerly usurped is their power that they use, which if once thoroughly known, would not be so dreaded as of late years it hath been: But I would advise you for the present to appear at the Court, and shew them my reasons why they have no power to excommunicate thee, and demand a Libel, and put in an Answer for delay, yea, and suffer them to go to an hearing, and proceed to sentence of Excommunication, and then either move in the Courts above for a Prohibition, or else within fifteen days after sentence make thy appeal to the Arches to gain time; then proceed against him in whose name the Court is held, whose name bears Test to the Summons, to Indict him on the Statute of Premunire, for taking on him to judg in matters whereof he hath no cognisance; and besides, to bring an Action of the case against him for damages, for excommunicating of thee without authority; and I am perswaded thou wilt have Justice done thee by a Countrey-Jury; for the Countrey have been sufficiently vexed.

vexed by them, and would be glad to have a way found out to punish them at last, and to deterr them from vexing the Country any more with proceedings of this nature.

*Si quid novisti restius istis*

*Candidus imperti, si non, his utere mecum.*

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**FINIS.**

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